

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF) CR 82-0292-RSWL
AMERICA,)
Plaintiff,) **ORDER**
v.)
GERALD L. ROGERS,)
Defendant.)

)

Currently before this Court is Appeal for Writ of Error to Dismiss Unlawful Indictment to Void Conviction ("Appeal for Writ") filed by Defendant Gerald L. Rogers ("Defendant"). Having considered all papers and arguments, **THE COURT NOW FINDS AND RULES AS FOLLOWS:**

"In general, [28 U.S.C.] § 2255 provides the exclusive procedural mechanism by which a federal prisoner may test the legality of his detention." Ivy

1 v. Pontesso, 328 F.3d 1057, 1059 (9th Cir. 2003).

2

3 Section 2255 states: "A second or successive motion
4 must be certified as provided in section 2244 [28
5 U.S.C. § 2244] by a panel of the appropriate court of
6 appeals to contain (1) newly discovered evidence . . .
7 or (2) a new rule of constitutional law." 28 U.S.C. §
8 2255(h).

9

10 "[A] prisoner may proceed under § 2241 [(writ of
11 habeas corpus)] if he can show that 'the remedy by
12 motion [under § 2255] is inadequate or ineffective to
13 test the legality of his detention.'" Ivy, 328 F.3d at
14 1059.

15

16 In this case, Defendant purports to file the
17 current Appeal for Writ pursuant to 28 U.S.C. §
18 1651(a).¹

19

20 However, "All Writs Act [i.e. § 1651] is a residual
21 source of authority to issue writs that are not
22 otherwise covered by statute. Where a statute
23 specifically addresses the particular issue at hand, it
24 is that authority, and not the All Writs Act, that is

25

26

27 ¹ 28 U.S.C. § 1651(a) states: "The Supreme Court and all
28 courts established by Act of Congress may issue all writs
necessary or appropriate in aid of their respective jurisdictions
and agreeable to the usages and principles of law."

1 controlling." Pennsylvania Bureau of Correction v.
2 United States Marshals Service, 474 U.S. 34, 43 (1985).

3

4 In this case, 28 U.S.C. § 2241 (writ of habeas
5 corpus) is the statute that specifically addresses the
6 issue at hand, and therefore, is the statute that
7 controls.

8

9 Accordingly, the current Appeal for Writ under §
10 1651(a) is procedurally improper.

11

12 Moreover, Defendant has made no showing why a
13 "motion under § 2255 is inadequate or ineffective to
14 test the legality of his detention." Ivy, 328 F.3d at
15 1059 (stating that the exception to file under § 2241
16 "is narrow [], and that § 2255's remedy is not
17 'inadequate or ineffective' merely because § 2255's
18 gatekeeping provisions prevent the petitioner from
19 filing a second or successive petition.").

20

21 Accordingly, the current Appeal for Writ is
22 procedurally improper even if the Court treats it as
23 filed under § 2241.

24

25 Furthermore, the current Appeal for Writ is
26 procedurally improper under § 2255 because it would be
27 a successive motion that has not been certified by a

1 panel of the appropriate court of appeals.
2

3 In conclusion, the Court **DENIES** the Appeal for Writ
4 of Error to Dismiss Unlawful Indictment to Void
5 Conviction because it is procedurally deficient.
6

7 **IT IS SO ORDERED.**
8

9 / s /
10

11 HONORABLE RONALD S.W. LEW
12 Senior U.S. District Judge
13

14 DATED: June 12, 2008
15

16

17

18

19

20

21

22

23

24

25

26

27

28